OTTO C. SVANCARA
GRETE SVANCARA

IBLA 85-235 Decided June 25, 1985

Appeal from a decision of the Alaska State Office, Bureau of Land Management, dismissing petition for reinstatement of oil and gas lease AA-48665.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

   Under 30 U.S.C. § 188(c) (1982), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to pay annual rental timely where the lessee fails to submit the full amount of rental due within 20 days of the anniversary date of the lease.

2. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Reinstatement

   Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as holder of record of the lease, and not the potential assignee, may petition to have the lease reinstated pursuant to 43 U.S.C. § 188(c) (1982).

APPEARANCES: Otto R. Svancara, for himself and Grete Svancara.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Otto R. and Grete Svancara have appealed from a November 26, 1984, decision of the Alaska State Office, Bureau of Land Management (BLM), dismissing their petition for reinstatement of oil and gas lease AA-48665. Appellants were the holders of a partial assignment for the lease which had not been approved. The decision stated that appellants had not paid the annual rental for their portion of the lease timely, and that in such circumstances, only the lessee of record could petition for reinstatement of the terminated

lease. BLM determined that appellants did not have the right to petition for reinstatement.

Oil and gas lease AA-48665 (8,320 acres) was initially issued to Alaska Federal Petroleum Corporation (Alaska Federal), effective July 1, 1983. On February 1, 1984, BLM issued decisions approving 21 partial assignments of that lease. The partial assignments had been filed in August 1983 and were approved effective September 1, 1983. However, Alaska Federal's assignment to appellants of the NW 1/4, sec. 23, T. 21 S., R. 2 W., Fairbanks Meridian, was not filed until November 14, 1983, 1/ and was never approved by BLM. Since the assignment had never been approved, Alaska Federal remained the lessee of record and continued "to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." 30 U.S.C. § 187a (1982).

When the annual rental became due on July 1, 1984, Alaska Federal submitted no payment for the land included in the base lease, nor did appellants submit rental for that portion of the base lease that had been assigned to them. As no rental had been received, the following provision of 30 U.S.C. § 188(b) (1982) took automatic effect: "[U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law." (Emphasis added.) Under the terms of this statute the termination of the lease occurs automatically when the rental is not received, and does not depend on or result from action by a BLM administrative official. Thus, oil and gas lease AA-48665 automatically terminated on July 1, 1984.

On September 14, 1984, the Alaska State Office issued a notice informing Alaska Federal and appellants that the oil and gas lease had terminated and advised them of the right to petition for reinstatement of the lease under either class I or class II reinstatement.

Although this notice was mailed to Alaska Federal's last address of record, it was returned with the notation that the addressee had moved and left no forwarding address. Alaska Federal filed no petition for reinstatement of its lease. Appellants, however, filed a petition for class I reinstatement but let the period for filing a class II petition lapse.

[1] Under 30 U.S.C. § 188(c) (1982), the statutory provision authorizing class I reinstatement, the Secretary is without authority to reinstate an oil and gas lease terminated by operation of law for failure to pay annual rental timely unless the full amount of the rental due is submitted within 20 days after the anniversary date of the lease and other requirements are met. Thus, in the absence of a showing that the required payment had been tendered on or before July 20, 1984, a class I reinstatement could not be granted. I. Edward Hollington, 86 IBLA 345 (1985); see Jerry D. Powers, 85 IBLA 116 (1985).

1/ Appellants state that they entered into a purchase agreement dated Aug. 31, 1983, with Alaska Federal. Appellants note, however, that the payment was made on Nov. 1, 1983.

Appellants subsequently submitted rental to cover acreage subject to the pending assignment and sought to have their proportionate share of the lease reinstated. While we have held that potential assignees may pay the proportionate rental to protect their assigned interest in an outstanding lease, their rental must be received prior to termination of the base lease, or within 20 days following the date of termination of the base lease for nonpayment of rentals. See Ladd Petroleum Corp., 70 IBLA 313 (1983). Alaska Federal's lease terminated on July 1, 1984. Appellants' payment covering their assigned acreage was not received until long after the anniversary date. Thus, BLM could no longer retroactively approve their assignments and avoid the effects of 30 U.S.C. § 188(b) (1982).

[2] In Victory Land & Exploration Co., 65 IBLA 373 (1982), we affirmed a BLM decision denying a petition for reinstatement of a terminated oil and gas lease filed by a potential assignee. Therein we said:

> In Grace Petroleum Corp., 62 IBLA 180 (1982), the Board ruled that where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the lessee who is holder of record of the lease, and not the potential assignee, may petition to have the lease reinstated on the ground that reasonable diligence was exercised or that late payment was justified. There are two statutory bases for this holding. Under 30 U.S.C. § 188(c) (1976), as noted above, a terminated lease may be reinstated only if the failure to make timely payment "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." (Emphasis added.) Furthermore, the statutory provision governing assignments, 30 U.S.C. § 187a (1976), states that until approval of an assignment, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Thus, under the holding of Grace Petroleum Corp., supra, it is not relevant whether Victory's efforts to make timely payment of the rental constituted reasonable diligence or justifiable delay. The holder of record of the lease did not file a timely petition for reinstatement, and there is no allegation that any action by Guthrie would meet the requirements for reinstating the lease. [Footnote omitted.]

Victory Land & Exploration Co., supra at 374-75. As holders of an unapproved assignment, appellants could not petition for reinstatement of the lease. Only Alaska Federal could exercise the right to petition for reinstatement of the terminated lease but failed to do so. Accordingly, BLM properly dismissed appellants' petition for reinstatement.

Appellants state they received no information concerning the payment of an annual rental fee until the September 14, 1984, notice from BLM. The stated reason for taking this appeal is that they were furnished with no information concerning the payment of an annual rental fee prior to the receipt of correspondence dated September 14, 1984.

The fact that appellants were furnished with no information concerning the payment of annual rental provides no basis for reversal of the decision below. As noted above, appellants' assignment had not been approved by the anniversary date of the lease, and the assignor is record title holder until the assignment is approved. E.g., Oasis Oil Co. v. Bell Oil & Gas Co., 106 F. Supp. 954, 957 (W.D. Okla. 1952); Reichhold Energy Corp., 40 IBLA 134, 137 (1979), aff'd, Reichhold Energy Corp. v. Andrus, No. 79-1274 (D.D.C. Apr. 30, 1980), aff'd without opinion, No. 80-1652 (D.C. Cir. Apr. 24, 1981). In KernCo Drilling Co., 71 IBLA 53, 60-61 (1983) we reviewed prior departmental decisions which considered whether BLM was required to notify persons other than the lessee of record concerning the lessee's obligations. We concluded that notice to the lessee of record was all that was required. We relied in part on Tenneco Oil Co., 63 IBLA 339 (1982), which held that BLM is not required to give separate notice of the termination of an oil and gas lease to an assignee whose application for assignment has been filed but not yet acted upon. We held that if an assignment has been made but not yet acted upon, the lessee of record still retains full authority to take action with respect to the lease, including the authority to relinquish it, notwithstanding the fact that such action would cut off the rights of his assignees, citing J. M. Dunbar, 62 IBLA 119 (1982). Thus, as far as BLM was concerned, Alaska Federal remained responsible for payment of the rental.

If anyone had the obligation to notify appellants about the need to make any payment of rental for the lease, it was the assignor, Alaska Federal. Inasmuch as an assignee agrees to be bound by the terms and conditions of the oil and gas lease, no prudent person would consider purchasing an interest in a lease without first learning what those terms and conditions are. If appellants have suffered a loss because they were unaware of such a requirement, they must look to Alaska Federal for whatever redress they may be able to obtain. See KernCo Drilling Co., supra at 61.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge